

## Simmons, Tommy

---

**From:** Owens, Brian  
**Sent:** Tuesday, June 5, 2018 10:00 AM  
**To:** Simmons, Tommy; Bergmann, Kimberly; Jerry Valdez  
**Subject:** RE: FW: Handy: TX

Good here.

Brian Owens  
Chief of Staff  
Commissioner Ruth Hughs  
Texas Workforce Commission  
512-936-2772  
[Brian.owens@twc.state.tx.us](mailto:Brian.owens@twc.state.tx.us)

*Unless otherwise indicated or obvious from the nature of this transmittal, the information contained in this email is confidential and excepted from disclosure by the exceptions incorporated into, Texas Government Code, Sections 552.101 through 552.1425, including without limitation the attorney-client privilege and deliberative process exceptions. Any unauthorized review, use, disclosure or distribution is prohibited without the express authorization of the Texas Workforce Commission.*

**From:** Simmons, Tommy  
**Sent:** Tuesday, June 05, 2018 9:38 AM  
**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Jerry Valdez  
**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

It's good for me.

Thanks,

Tommy

**From:** Bergmann, Kimberly  
**Sent:** Tuesday, June 5, 2018 9:30 AM  
**To:** Jerry Valdez  
**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>; Simmons, Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

How would 2 p.m. work?

Kim Bergmann  
Executive Assistant  
Texas Workforce Commission  
Commissioner Ruth Hughs  
101 E. 15<sup>th</sup> Street, Room 630  
Austin, TX 78778

Phone: 512-463-9986  
Fax: 512-463-1289  
[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Bergmann, Kimberly  
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**Subject:** RE: FW: Handy: TX

Jerry:

Brian Owens and Tommy Simmons are available anytime between 1-4 p.m. tomorrow for a conference call.

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[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 6:58 AM  
**To:** Hughs, Ruth R <[ruth.hughs@twc.state.tx.us](mailto:ruth.hughs@twc.state.tx.us)>  
**Cc:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** Re: FW: Handy: TX

hi Kim - Good Morning.

how about afternoon, sometime. maybe 1-4pm timeframe?

please advise. thank you. once confirmed, I will send out calendar item with call in info.

**Jerry Valdez**  
[REDACTED]

512-477-1117 Office  
512-694-7611 Mobile

**Mailing Address**  
P.O. Box 12031  
Austin, Texas 78711

Physical Address  
816 Congress Avenue, Ste. 1125  
Austin, Texas 78701

On Mon, Jun 4, 2018 at 5:52 PM, Jerry Valdez [REDACTED] wrote:

let's try for a pre call with Kim.  
let me round my folks in and be in touch.

Kim  
what is better ? morning or afternoon ?

On Mon, Jun 4, 2018 at 4:54 PM Hughs,Ruth R wrote:

Hi Jerry. I'm at the Army War College this week with limited reception. I can ask my staff to cover or we can set something up for the next week. let me know your preference. I am copying Kim to coordinate.

Any updates on the status of the legislation in other states? I did see some states have laws kicking in this summer.

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**From:** Jerry Valdez [REDACTED]  
**Sent:** Monday, June 4, 2018 12:12:25 PM  
**To:** Hughs,Ruth R  
**Subject:** Re: FW: Handy: TX

any chance we could hop on a call on Wednesday?

On Wed, May 23, 2018 at 4:20

Thank you for this list of litigation involving handy. What I was hoping to see was what legislation Handy has pursued in other states and what the status of that legislation is at this point? Also, is the legislative effort to have workers classified as independent contractors only, or to include a benefits contribution as well as IC status (I think that is what they were seeking in NY, not sure if sought in other states or not)? Hope this makes sense. Look forward to hearing back soon. Thanks!

Ruth R. Hughs

Commissioner Representing Employers

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pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

**Jerry Valdez**

[REDACTED]

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

## Simmons, Tommy

---

**From:** Hughs, Ruth R  
**Sent:** Sunday, May 20, 2018 7:48 PM  
**To:** Simmons, Tommy; Owens, Brian  
**Cc:** Bergmann, Kimberly  
**Subject:** Fw: FW: Handy: TX  
**Attachments:** Handy- Texas- On-Demand Lawsuits.v2.docx

fyi

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Friday, May 18, 2018 3:31 PM  
**To:** Hughs, Ruth R  
**Subject:** Fwd: FW: Handy: TX

**CAUTION:** Email not from TWC System. Use care when clicking links and opening attachments.

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thank you very much.

**Jerry Valdez**  
[REDACTED]

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**Physical Address**

816 Congress Avenue, Ste. 1125  
Austin, Texas 78701

X

### **Lawsuits Filed Against On-Demand Companies**

Because of outdated worker classification laws, companies in the on-demand sector face the constant risk of costly lawsuits and investigations. To date, class actions have been filed against on-demand companies all across the country, but most are filed in venues in states like California and Massachusetts that are considered “friendly” by the plaintiff’s lawyers. At least 30 lawsuits, many of them class actions, have been filed against the industry so far.

One Boston plaintiff’s attorney, Shannon Liss-Riordan, has made a cottage industry out of suing on-demand companies. So far, she has sued at least 10 on-demand companies in at least 15 class actions. She even used the same plaintiff (Raef Lawson) in two suits against two different companies (Amazon and Grubhub)!

Although the companies have prevailed in the cases that have gone to trial or appeal, they can take years to litigate and the companies incur significant legal expenses in the process. For example:

- In California, Grubhub recently received a verdict upholding its classification of a driver as an independent contractor in a case that began as a class action. Grubhub’s victory followed 2 years of litigation, and is now under appeal, so the litigation is not over yet.
- In Florida, Uber won a case against it, with the court concluding the driver was properly classified as an independent contractor. But this ruling followed at least 2 years of litigation.
- In a case involving an on-demand tutoring company, a Colorado court held that the tutors were independent contractors, but it took 3 years and 4 different levels of litigation to finally obtain that validation.

It is important for the companies to have clear rules to follow, and to have security that if they comply with those requirements, they will not be forced to face years of costly litigation to establish that they’re doing things the right way.

Below are some of the lawsuits that have been allowed to proliferate due to outdated laws on worker classification. The cases highlighted in yellow are all filed by the same plaintiff's attorney (Liss-Riordan).

Company	Lawsuit
Uber	<b><i>Yucesoy v Uber Technologies, Inc.</i>, No. 15-17422 (9<sup>th</sup> Cir.) (class action)</b>
	<b><i>Bowcock v Uber Technologies, Inc.</i> No. BC 657689 (Cal. Sup. Ct. Los Angeles)</b>
	<i>McGillis v. Dept. of Economic Opportunity</i> , 210 So.3d 220 (Fla. Ct. App. 2017)
	<i>Rojas v. Uber Technologies, Inc.</i> , No. CV 16-23670 (S.D. Fla. 2017)
	<i>Razak v. Uber Technologies, Inc.</i> , No. CV 16-573 (E.D. Pa. Apr. 11, 2018)
	<i>Olivares v. Uber Technologies, Inc.</i> , No. 16 C 6062 (N.D. Ill. 2017)
	<b><i>Price v Uber Technologies Inc.</i>, No. BC554512 (Sup. Ct., Los Angeles) (class action)</b>
	<i>Lavitman v. Uber Technologies, Inc.</i> , 32 Mass.L.Rptr. 476 (Mass. Super. Ct. 2015)
Google Express	<b><i>Coorey v Google Inc. (dba Google Express)</i>, No. 1584CV03311 (Mass. Sup. Ct.) (class action)</b>
Amazon	<i>Rittmann v. Amazon.com, Inc.</i> , No. C16-1554-JCC (W.D. Wash. 2017)
	<b><i>Lawson v Amazon.com, Inc.</i>, No. 2:17-cv-01438 (C.D. Cal.) (private attorney general action)</b>
Grubhub	<b><i>Lawson v Grubhub, Inc.</i>, No. 3:15-CV-05128 (N.D. Cal.) (originally filed as class action)</b>
	<b><i>Souran v Grubhub Holdings Inc.</i>, No. 1:16-cv-6720 (N.D. Ill.) (class action)</b>
	<i>Tan v. Grubhub, Inc.</i> , No. 15-CV-05128 (N.D. Cal. 2016)
Handy	<b><i>Emmanuel v. Handy Technologies, Inc.</i>, No. 1:15-CV-12914 (D. Mass.)</b>
	<i>Easton v. Handy Technologies, Inc.</i> , No. 37-2016-00004419-CU-OE-CTL (Cal. Super. Ct., San Diego County)
	<i>Malone v. Handybook, Inc.</i> , No. 2:14-CV-08906 (C.D. Cal.)
	<b><i>Washington v. Handy Technologies, Inc.</i>, No. (Cal. Super. Ct., San Francisco County) (private attorney general action)</b>
	<i>Passarinho v. Handybook, Inc.</i> , No. 1:15-CV-03984 (S.D.N.Y.)
	<i>Zenelaj v. Handy Technologies, Inc.</i> , No. 4:14-CV-05449 (N.D. Cal.)
Lyft	<b><i>Bekele v Lyft Inc.</i>, No. 1:15-CV-11650 (D. Mass.) (class action)</b>
	<b><i>Cotter v Lyft, Inc.</i>, No. 3:13-CV-04065 (N.D. Cal.) (class action)</b>

DoorDash	<b><i>Austin v. DoorDash, Inc.</i>, No. 1:17-CV-12498 (D. Mass.) (class action)</b>
	<b><i>Marciano v DoorDash, Inc.</i>, No. CGC-15-548101 (Cal. Sup. Ct., San Francisco) (private attorney general)</b>
	<i>Edwards v. DoorDash, Inc.</i> , No. CV H-16-2255 (S.D. Tex. 2016)
Instacart	<b><i>Cobarruviaz v Maplebear, Inc. (dba Instacart)</i>, No. 3:15-CV-00697 (N.D. Cal.) (class action)</b>
	<i>Moton v. Maplebear Inc. (d/b/a Instacart)</i> , No. 15 Civ. 8879 (S.D.N.Y. Feb. 9, 2016)
	<i>Bynum v. Maplebear Inc.</i> , No. 15-CV-6263 (E.D.N.Y. 2016)
	<b><i>Camp v. Maplebear Inc. (dba Instacart)</i>, No. BC652216 (Cal. Super. Ct., Los Angeles) (class action)</b>
Homejoy	<b><i>Iglesias v. Homejoy, Inc.</i>, No. 15-1286 (N.D. Cal.) (class action)</b>
Washio	<b><i>Taranto v Washio, Inc.</i>, No. CGC-15-546584 (Cal. Sup. Ct., San Francisco) (class action)</b>

With respect to the current worker classification lawsuits against Handy:

#### California

- *Zenelaj v. Handy Technologies, Inc.*, No. 4:14-CV-05449 (N.D. Cal.)
- *Washington v. Handy Technologies, Inc.*, No. (Cal. Super. Ct., San Francisco County)
- *Easton v. Handy Technologies, Inc.*, No. 37-2016-00004419-CU-OE-CTL (Cal. Super. Ct., San Diego County)
  - Zenelaj and Washington were filed by the same lawyer and together with Easton were collectively settled in January 2018.

#### Massachusetts

- *Emmanuel v. Handy Technologies, Inc.*, No. 1:15-CV-12914 (D. Mass.) (Liss Riordan counsel to plaintiffs)
  - This lawsuit was stayed pending the US Supreme Court's decision in the Morris cases.

There is also an NLRB administrative action against Handy, NLRB v. Handy Technologies, Inc., No. 01-CA-158125 (NLRB). The NLRB action was filed by one of the same plaintiffs and the same lawyer (Liss-Riordan) who has sued many on-demand companies. A hearing was scheduled for December 2017, but the NLRB indefinitely postponed the hearing pending the US Supreme Court's decision in other cases currently before it.

Handy is confident that it will prevail in the NLRB matter and other lawsuit, because the professionals using the Handy platform are independent contractors – a fact which has been consistently upheld in similar cases.



## **Bergmann, Kimberly**

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, December 19, 2017 9:04 AM  
**To:** Bergmann, Kimberly  
**Subject:** Re: Info

wow!! our emails crossed!!

sorry for some degree of craziness. am trying to accommodate two executives with especially busy schedules.

### **Jerry Valdez**

[REDACTED]  
512-477-1117 Office  
512-694-7611 Mobile  
P.O. Box 12031  
Austin, Texas 78711

On Tue, Dec 19, 2017 at 9:02 AM, Jerry Valdez [REDACTED]  
hello Kim

for our call on Thursday, would 1pm work? just trying to accommodate everyone.

### **Jerry Valdez**

[REDACTED]  
512-477-1117 Office  
512-694-7611 Mobile  
P.O. Box 12031  
Austin, Texas 78711

On Thu, Dec 14, 2017 at 4:35 PM, Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)> wrote:

Jerry:

My contact information is below.

Kim Bergmann

Executive Assistant

Texas Workforce Commission

Commissioner Ruth Hughs

101 E. 15<sup>th</sup> Street, Room 630

Austin, TX 78778

Phone: 512-463-9986

Fax: 512-463-1289

kimberly.bergmann@twc.state.tx.us

**From:** Jerry Valdez [REDACTED]  
**Sent:** Monday, December 4, 2017 3:52 PM  
**To:** Bergmann, Kimberly <kimberly.bergmann@twc.state.tx.us>  
**Subject:** Info

Here you go.

--

Jerry Valdez  
[REDACTED]

512-694-7611

512-477-1117

## **Bergmann, Kimberly**

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Wednesday, June 6, 2018 6:01 PM  
**To:** Simmons, Tommy  
**Cc:** Owens, Brian; Bergmann, Kimberly; Hughs, Ruth R; Mackenna Weymeyer  
**Subject:** Re: FW: FW: Handy: TX

thanks for the call today. I am adding Mackenna Wehmeyer to the email chain. she is covering me during my upcoming trip.

she can arrange to get the handy.com folks lined up once you have briefed Comm. Hughs.

many thanks and take care.

### **Jerry Valdez**

[REDACTED]

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512-694-7611 Mobile

#### **Mailing Address**

P.O. Box 12031  
Austin, Texas 78711

#### **Physical Address**

816 Congress Avenue, Ste. 1125  
Austin, Texas 78701

On Tue, Jun 5, 2018 at 4:33 PM, Simmons, Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)> wrote:

Jerry,

We're good to go for 1:00 Central time tomorrow and are looking forward to the call.

Sincerely,

Tommy Simmons

**From:** Owens,Brian  
**Sent:** Tuesday, June 5, 2018 4:21 PM  
**To:** Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

Good here

**From:** Simmons,Tommy  
**Sent:** Tuesday, June 05, 2018 3:57 PM  
**To:** Jerry Valdez [REDACTED]; Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

I can do that – if that works for you, Brian, we'll calendar it that way.

Tommy Simmons

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 3:55 PM  
**To:** Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Subject:** Re: FW: Handy: TX

sorry. really sorry. lots of moving parts and lots of different people on this call. we need to do the call at 1 PM central.

again, my apologies. talk to you at 1pm.

can someone please confirm receipt of this change to the calendar ?

On Tue, Jun 5, 2018 at 4:09 PM Jerry Valdez [REDACTED] wrote:

good afternoon, all -

2pm Call tomorrow. see below.

Dial In Number 888-296-6500  
[REDACTED]

On Tue, Jun 5, 2018 at 11:00 AM Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)> wrote:

Good here.

Brian Owens

Chief of Staff

Commissioner Ruth Hughs

Texas Workforce Commission

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Commissioner Representing Employers

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thank you very much.

**Jerry Valdez**

[REDACTED]

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

## Bergmann, Kimberly

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Wednesday, December 20, 2017 3:53 PM  
**To:** Bergmann, Kimberly  
**Subject:** Re: thursday call

I recall that being the case. I just wanted to make sure you got the call in number and background document to Commissioner Hughs.

Tomorrow, it will be me and Brian Miller, General Counsel for Handy Book.

### Jerry Valdez

[REDACTED]

512-477-1117 Office  
512-694-7611 Mobile  
P.O. Box 12031  
Austin, Texas 78711

On Wed, Dec 20, 2017 at 8:52 AM, Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)> wrote:

Jerry:

I'm actually out of the office today. Who all will be on the call tomorrow?

Kim

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, December 19, 2017 10:32 PM

**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** Re: thursday call

sorry again for so much hoo-haw on this one.

we are set for 2pm on Thursday.

below is call in information.

Dial In Number 888-296-6500

[REDACTED] [REDACTED]

I know you mentioned being out on Thursday. Let me know you got this, or I can reach out directly to RH on her cell or work with someone else.

Thanks and Merry Christmas.

**Jerry Valdez**

[REDACTED]

512-477-1117 Office

512-694-7611 Mobile

P.O. Box 12031

Austin, Texas 78711

On Tue, Dec 19, 2017 at 2:08 PM, Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)> wrote:

Jerry:

I do need to move around a couple of meetings on Thursday, if the conference call is going to be at 2 or 2:30, so if you can let me know as soon as you can, it would be greatly appreciated.

Kim

**From:** Bergmann, Kimberly  
**Sent:** Tuesday, December 19, 2017 12:00 PM  
**To:** 'Jerry Valdez' [REDACTED]  
**Subject:** RE: thursday call

I completely understand. If 2 doesn't work, maybe 2:30?

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, December 19, 2017 10:47 AM  
**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** Re: thursday call

am asking. sorry for delays. organizing three calendars and all on email...

sorry. will be in touch soon.

hope you are having a good day and staying dry.

**Jerry Valdez**

512-477-1117 Office

512-694-7611 Mobile

P.O. Box 12031

Austin, Texas 78711

On Tue, Dec 19, 2017 at 10:35 AM, Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)> wrote:

What about 2 p.m., would that work?

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, December 19, 2017 9:31 AM  
**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** Re: thursday call

okie dokie. I can push as well on my end.

On Tue, Dec 19, 2017 at 9:29 AM Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)> wrote:

I'm seeing what I can do. She is pretty much tied up until 3 p.m. that day.

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, December 19, 2017 9:27 AM  
**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** thursday call

am REALLY hoping 1pm can work on Thursday.

It's been like herding goats...

--

Jerry Valdez

[REDACTED]  
[512-694-7611](tel:512-694-7611)  
[512-477-1117](tel:512-477-1117)

--  
Jerry Valdez

  
512-694-7611

512-477-1117



## Hughs,Ruth R

---

**From:** Hughs,Ruth R  
**Sent:** Tuesday, June 5, 2018 7:16 AM  
**To:** Jerry Valdez  
**Cc:** Bergmann,Kimberly; Owens,Brian  
**Subject:** Re: Handy: TX

Ok. Kim can help organize a time. I will ask Brian Owens to take the call. Thanks.

Sent from my iPhone

On Jun 4, 2018, at 6:53 PM, Jerry Valdez [REDACTED] wrote:

let's try for a pre call with Kim.  
let me round my folks in and be in touch.

Kim  
what is better ? morning or afternoon ?

On Mon, Jun 4, 2018 at 4:54 PM Hughs,Ruth R wrote:

Hi Jerry. I'm at the Army War College this week with limited reception. I can ask my staff to cover or we can set something up for the next week. let me know your preference. I am copying Kim to coordinate.

Any updates on the status of the legislation in other states? I did see some states have laws kicking in this summer.

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Monday, June 4, 2018 12:12:25 PM  
**To:** Hughs,Ruth R  
**Subject:** Re: FW: Handy: TX

any chance we could hop on a call on Wednesday?

On Wed, May 23, 2018 at 4:20

Thank you for this list of litigation involving handy. What I was hoping to see was what legislation Handy has pursued in other states and what the status of that legislation is at this point? Also, is the legislative effort to have workers classified as independent contractors only, or to include a benefits contribution as well as IC status (I think that is what they were seeking in NY, not sure if sought in other states or not)? Hope this makes sense. Look forward to hearing back soon. Thanks!

Ruth R. Hughs

Commissioner Representing Employers

Texas Workforce Commission

101 E. 15<sup>th</sup> Street

Austin, Texas 78778-0001

**Subject:** Fwd: FW: Handy: TX

**CAUTION:** Email not from TWC System. Use care when clicking links and opening attachments.

pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

**Jerry Valdez**

[REDACTED]

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

## Hughs,Ruth R

---

**From:** Simmons,Tommy  
**Sent:** Thursday, June 7, 2018 9:39 AM  
**To:** Hughs,Ruth R  
**Subject:** FW: FW: FW: Handy: TX

FYI - Tommy

**From:** Jerry Valdez [REDACTED]  
**Sent:** Wednesday, June 6, 2018 6:01 PM  
**To:** Simmons,Tommy <tommy.simmons@twc.state.tx.us>  
**Cc:** Owens,Brian <brian.owens@twc.state.tx.us>; Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>; Hughs,Ruth R <ruth.hughs@twc.state.tx.us>; Mackenna Weymeyer [REDACTED]  
**Subject:** Re: FW: FW: Handy: TX

thanks for the call today. I am adding Mackenna Wehmeyer to the email chain. she is covering me during my upcoming trip.

she can arrange to get the [handy.com](http://handy.com) folks lined up once you have briefed Comm. Hughs.

many thanks and take care.

## Jerry Valdez

[REDACTED]

512-477-1117 Office  
512-694-7611 Mobile

**Mailing Address**  
P.O. Box 12031  
Austin, Texas 78711

**Physical Address**  
816 Congress Avenue, Ste. 1125  
Austin, Texas 78701

On Tue, Jun 5, 2018 at 4:33 PM, Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)> wrote:

Jerry,

We're good to go for 1:00 Central time tomorrow and are looking forward to the call.

Sincerely,

Tommy Simmons

**From:** Owens,Brian  
**Sent:** Tuesday, June 5, 2018 4:21 PM  
**To:** Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

Good here

**From:** Simmons,Tommy  
**Sent:** Tuesday, June 05, 2018 3:57 PM  
**To:** Jerry Valdez [REDACTED]; Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

I can do that – if that works for you, Brian, we'll calendar it that way.

Tommy Simmons

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 3:55 PM  
**To:** Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Subject:** Re: FW: Handy: TX

sorry. really sorry. lots of moving parts and lots of different people on this call. we need to do the call at 1 PM central.

again, my apologies. talk to you at 1pm.

can someone please confirm receipt of this change to the calendar ?

On Tue, Jun 5, 2018 at 4:09 PM Jerry Valdez [REDACTED] wrote:

good afternoon, all -

2pm Call tomorrow. see below.

Dial In Number 888-296-6500  
[REDACTED]

On Tue, Jun 5, 2018 at 11:00 AM Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)> wrote:

Good here.

Brian Owens

Chief of Staff

Commissioner Ruth Hughs

Texas Workforce Commission

512-936-2772

[Brian.owens@twc.state.tx.us](mailto:Brian.owens@twc.state.tx.us)

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**From:** Simmons,Tommy

**Sent:** Tuesday, June 05, 2018 9:38 AM

**To:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Jerry Valdez [REDACTED]

**Cc:** Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

It's good for me.

Thanks,

Tommy

---

**From:** Bergmann,Kimberly

**Sent:** Tuesday, June 5, 2018 9:30 AM

**To:** Jerry Valdez [REDACTED]

**Cc:** Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>; Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

How would 2 p.m. work?

Kim Bergmann

Executive Assistant

Texas Workforce Commission

Commissioner Ruth Hughs

101 E. 15<sup>th</sup> Street, Room 630

Austin, TX 78778

Phone: 512-463-9986

Fax: 512-463-1289

[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Bergmann, Kimberly

**Sent:** Tuesday, June 5, 2018 8:23 AM

**To:** 'Jerry Valdez' [REDACTED]

**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>; Simmons, Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

Jerry:

Brian Owens and Tommy Simmons are available anytime between 1-4 p.m. tomorrow for a conference call.

Kim Bergmann

Executive Assistant

Texas Workforce Commission

Commissioner Ruth Hughs

101 E. 15<sup>th</sup> Street, Room 630

Austin, TX 78778

Phone: 512-463-9986

Fax: 512-463-1289

[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 6:58 AM  
**To:** Hughs,Ruth R <ruth.hughs@twc.state.tx.us>  
**Cc:** Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>  
**Subject:** Re: FW: Handy: TX

hi Kim - Good Morning.

how about afternoon, sometime. maybe 1-4pm timeframe?

please advise. thank you. once confirmed, I will send out calendar item with call in info.

**Jerry Valdez**

[REDACTED]  
**512-477-1117 Office**

**512-694-7611 Mobile**

**Mailing Address**

**P.O. Box 12031**

**Austin, Texas 78711**

**Physical Address**

**816 Congress Avenue, Ste. 1125**

**Austin, Texas 78701**



On Mon, Jun 4, 2018 at 5:52 PM, Jerry Valdez [REDACTED] wrote:

let's try for a pre call with Kim.

let me round my folks in and be in touch.

Kim

what is better ? morning or afternoon ?

On Mon, Jun 4, 2018 at 4:54 PM Hughs,Ruth R wrote:

Hi Jerry. I'm at the Army War College this week with limited reception. I can ask my staff to cover or we can set something up for the next week. let me know your preference. I am copying Kim to coordinate.

Any updates on the status of the legislation in other states? I did see some states have laws kicking in this summer.

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Monday, June 4, 2018 12:12:25 PM  
**To:** Hughs,Ruth R  
**Subject:** Re: FW: Handy: TX

any chance we could hop on a call on Wednesday?

On Wed, May 23, 2018 at 4:20

Thank you for this list of litigation involving handy. What I was hoping to see was what legislation Handy has pursued in other states and what the status of that legislation is at this point? Also, is the legislative effort to have workers classified as independent contractors only, or to include a benefits contribution as well as IC status (I think that is what they were seeking in NY, not sure if sought in other states or not)? Hope this makes sense. Look forward to hearing back soon. Thanks!

Ruth R. Hughs

Commissioner Representing Employers

Texas Workforce Commission

101 E. 15<sup>th</sup> Street

Austin, Texas 78778-0001

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**Subject:** Fwd: FW: Handy: TX

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pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

**Jerry Valdez**

[REDACTED]

--  
Jerry Valdez

[REDACTED]  
512-694-7611

512-477-1117

Jerry Valdez

512-694-7611

512-477-1117

--

Jerry Valdez

512-694-7611

512-477-1117

## Hughs,Ruth R

---

**From:** Simmons,Tommy  
**Sent:** Monday, June 11, 2018 4:44 PM  
**To:** Mackenna Wehmeyer; Bergmann,Kimberly; Owens,Brian  
**Subject:** RE: Tusk Strategies-Federal Unemployment Tax Act Information  
**Attachments:** FUTA summary TX.DOCX; 20180611115758613[1].pdf

Dear Ms. Wehmeyer,

Thank you very much for referring that information to us. I am sure it will be informative regarding the matters discussed.

Sincerely,

Tommy Simmons  
Senior Legal Counsel to Commissioner Ruth R. Hughs  
Commissioner Representing Employers  
Texas Workforce Commission  
[tommy\\_simmons@twc.state.tx.us](mailto:tommy_simmons@twc.state.tx.us)  
Toll-free: 1-800-832-9394  
Direct: 1-512-463-2967  
Book: <http://www.twc.state.tx.us/news/efte/tocmain.html>  
Web app: <http://texasworkforce.org/tbcapp>

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**From:** Mackenna Wehmeyer [REDACTED]  
**Sent:** Monday, June 11, 2018 2:46 PM  
**To:** Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>; Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Subject:** Tusk Strategies-Federal Unemployment Tax Act Information

Hello All,

My name is Mackenna Wehmeyer, I work with Jerry Valdez. As you may know, Jerry is out of the country, so I am the point person in his absence. Attached is the information requested during the call with Tusk Strategies regarding the Federal Unemployment Tax Act. They asked that I pass it along.

Please let me know if you have any further questions or concerns.

Thanks!

Best,  
Mackenna Head Wehmeyer  
[REDACTED]

512-657-7174

## **On-Demand Sector Proposal: FUTA Compliance**

### **I. In 2016, the USDOL stated that the language in the Arizona statute complied with FUTA requirements**

In 2016, the Arizona state legislature considered and then enacted legislation that created a new classification test for the on-demand sector. *See* Ariz. Rev. Stat. § 23-1603 (attached). While that legislation was still pending in the legislature, the USDOL raised questions regarding FUTA compliance.

FUTA requires that state unemployment compensation laws cover services performed for (a) state and local government entities and (b) certain charitable entities. These two categories are defined in FUTA section 3306(c)(7) and (8). To ensure that the bill was consistent with FUTA's requirements, the Arizona bill was amended to expressly provide that the new provision would not apply to these two categories of services. The bill was amended to state:

D. This section does not apply to:

1. Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 and 3306(c)(7)).
2. Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

Ariz. Rev. Stat. § 23-1603(D).

Following the amendment, the USDOL stated that “this latest version of the bill ... does not conflict with Federal UC law as long as the amended language is included to exempt state and local governmental entities, Indian tribes, and non-profit organizations from the provisions of the bill.” The relevant email string is attached.

### **II. The Amended Proposal Includes Provisions to Ensure Compliance with FUTA**

Texas' Unemployment Compensation Act includes provisions to ensure compliance with these FUTA requirements. *See, e.g.,* V.T.C.A., Labor Code §§ 201.025, 201.026, 201.048. In light of these statutory provisions, the proposal did not include the same language found in the Arizona statute.

However, in order to avoid confusion and ensure that the proposal would not create any risk of FUTA noncompliance, we revised the proposal to include the same type of provision found in the Arizona statute. *See below.*

**Proposal (Amended)**

**40 Tex. Admin. Code § 821.x. Employment Status: Marketplace Contractor**

(a) For purposes of this section:

(i) The term “marketplace platform” means a corporation, partnership, sole proprietorship, or other entity operating in this state that:

(A) uses a digital network to connect marketplace contractors to third party individuals or entities seeking the type of services offered by the marketplace contractors; and

(B) accepts service requests from the public only through its digital network, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.

(ii) The term “marketplace contractor” or “contractor” shall mean any individual, corporation, partnership, sole proprietorship, or other entity that enters into an agreement with a marketplace platform to use the platform’s digital network to receive connections to third party individuals or entities seeking the type of services offered by the marketplace contractor.

(b) A marketplace contractor shall be treated as an independent contractor, and not an employee, of the marketplace platform if all of the following conditions are met:

(i) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform;

(ii) That all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output;

(iii) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third party individuals or entities submitted through the marketplace platform’s online-enabled application, software, web site, or system;

(iv) The marketplace platform does not prohibit the marketplace contractor from using any online-enabled application, software, web site, or system offered by other marketplace platforms;

(v) The marketplace platform does not restrict the contractor from engaging in any other occupation or business;

(vi) The marketplace contractor bears all or substantially all of the contractor’s own expenses that are incurred by the contractor in performing the services;

(vii) The marketplace contractor is responsible for providing the necessary tools, materials, and equipment to perform the services;

(viii) The marketplace platform does not provide on-site supervision during the performance of the services by the contractor; and

(ix) The marketplace platform does not require the contractor to attend mandatory meetings or mandatory training.

(c) This section does not apply to:

(i) Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 and 3306(c)(7)).

(ii) Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

**Ariz. Rev. Stat. § 23-1603**

Effective: August 6, 2016

**A.R.S. § 23-1603**

**§ 23-1603. Qualified marketplace contractors; definitions**

A. A qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title<sup>1</sup> and workers' compensation laws prescribed in chapter 6 of this title,<sup>2</sup> if all of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.
2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform.
3. The written contract required by paragraph 2 of this subsection provides for all of the following:
  - (a) That the qualified marketplace contractor is providing services as an independent contractor and not as an employee.
  - (b) That, pursuant to paragraph 1 of this subsection, all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output.
  - (c) That the qualified marketplace contractor is allowed to work any hours or schedules the qualified marketplace contractor chooses. If the qualified marketplace contractor elects to work specified hours or schedules, a contract may require the qualified marketplace contractor to perform work during the selected hours or schedules.
  - (d) That the qualified marketplace contract does not restrict the contractor's ability to perform services for other parties.
  - (e) That the qualified marketplace contractor bears all or substantially all of the qualified marketplace contractor's own expenses that are incurred by the qualified marketplace contractor in performing the services.
  - (f) That the qualified marketplace contractor is responsible for the taxes on the qualified marketplace contractor's own income.
  - (g) That the contract and the association created by the contract may be terminated without cause by either party to the contract at any time on reasonable notice given to the other party.

B. For services performed by a qualified marketplace contractor before August 6, 2016, the qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if both of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.



2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that conforms to the requirements of subsection A, paragraph 3 of this section.

C. Compliance with this section is not mandatory in order to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

D. This section does not apply to:

1. Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the federal unemployment tax act (26 United States Code §§ 3301 and 3306(c)(7)).
2. Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the federal unemployment tax act (26 United States Code §§ 3301 through 3311), solely by reason of 26 United States Code § 3306(c)(8).

E. For the purposes of this section:

1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide services to third-party individuals or entities seeking those services. Qualified marketplace contractor does not include any contractor when the services performed consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.
2. "Qualified marketplace platform" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor or any other entity, that both:

(a) Operates a digital website or digital smartphone application that facilitates the provision of services by qualified marketplace contractors to individuals or entities seeking such services.

(b) Accepts service requests from the public only through its digital website or digital smartphone application, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.

Qualified marketplace platform does not include any digital website or smartphone application where the services facilitated consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.

### **Credits**

Added as § 23-1601 by Laws 2016, Ch. 210, § 1. Renumbered as § 23-1603.



**From:** Grant Hanna <GHanna@azleg.gov>

**Date:** April 8, 2016 at 12:16:18 PM PDT

**To:** Melissa Taylor <MTaylor@azleg.gov>, Wendy Briggs [REDACTED] Rene Guillen <rguillen@az.gov>, "Kathy A. Ber" <kber@azdes.gov>, "Elizabeth Dunfee" <EDunfee@azleg.gov>, [REDACTED]

**Subject:** FW: HB 2652 - USDOL conformity issue

DOL determination below.

---

**From:** Smith, Sherry L - ETA<mailto:Smith.Sherry.l@DOL.GOV>

**Sent:** 4/8/2016 11:52 AM

**To:** Grant Hanna<mailto:GHanna@azleg.gov>

**Subject:** FW: HB 2652 - USDOL conformity issue

FYI. Please see email below. If you have any additional questions please let me know.

Regards,

Sherry L. Smith, MBA, MSM

Unemployment Insurance Program Specialist

U.S. Department of Labor

Employment and Training Administration

Region 6, San Francisco

90 7th Street, Suite 17-100

San Francisco, CA 94103

Phone: (415) 625-7982

Fax: (415) 625-7923

Email: smith.sherry.l@dol.gov<mailto:smith.sherry.l@dol.gov>

**From:** McGucken, John - ETA

**Sent:** Friday, April 08, 2016 11:49 AM

**To:** Smith, Sherry L - ETA

**Subject:** FW: HB 2652 - USDOL conformity issue

Sherry,

Bob and I have reviewed this latest version of the bill and agree that it does not conflict with Federal UC law as long as the amended language is included to exempt state and local governmental entities, Indian tribes, and non-profit organizations from the provisions of the bill.

However, as noted in our letter, if the IRS determines the individuals are employees, the employer would be required to pay the full FUTA tax and not be eligible for a credit because no state contributions would have been paid on the wages.

From: Smith, Sherry L - ETA  
Sent: Friday, April 08, 2016 1:59 PM  
To: McGucken, John - ETA  
Cc: Grant Hanna (GHanna@azleg.gov<mailto:GHanna@azleg.gov>)  
Subject: FW: HB 2652 - USDOL conformity issue

Hello John,

Please see attached – thank you.

Sherry L. Smith, MBA, MSM  
Unemployment Insurance Program Specialist  
U.S. Department of Labor  
Employment and Training Administration  
Region 6, San Francisco  
90 7th Street, Suite 17-100  
San Francisco, CA 94103  
Phone: (415) 625-7982  
Fax: (415) 625-7923  
Email: smith.sherry.l@dol.gov<mailto:smith.sherry.l@dol.gov>

From: Grant Hanna [mailto:GHanna@azleg.gov]  
Sent: Friday, April 08, 2016 10:53 AM  
To: Smith, Sherry L - ETA  
Cc: Ber, Kathy, A; Melissa Taylor; Elizabeth Dunfee; Rene Guillen; Wendy Briggs; Marilyn Purvis  
Subject: RE: HB 2652 - USDOL conformity issue

Good morning Sherry,

Thank you for your call this morning. I appreciate the level of certainty DOL has provided by the reference to the compliant Oklahoma law<[https://www.ok.gov/oesc\\_web/documents/OESCAct.pdf](https://www.ok.gov/oesc_web/documents/OESCAct.pdf)>. I've compared this statute to the proposed amendment I sent you yesterday (attached) and believe our language, based on compliant Ohio Code<<http://codes.ohio.gov/orc/4141.01>>, is substantively consistent.

From John McGucken email below:

---

This is the language Oklahoma has offered to add to a similar bill and would take care of the issue raised in our letter. Note: It cites to the AZ law and they would need to be substituted. Hope this helps.

(E) This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-210(3), non-profit entities as provided for in 40 O.S. Sec. 1-210(4), or Indian tribal entities as provided for in 40 O.S. Sec. 1-108.

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Comparison of Oklahoma (E) and HB 2652 proposed amendment:

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1. This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-

210(3)

40 O.S. Sec. 1-210(3): Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 U.S.C., Section 3306(c) (7)

HB 2652: SERVICE PERFORMED IN THE EMPLOY OF A STATE, OR ANY POLITICAL SUBDIVISION THEREOF, OR IN THE EMPLOY OF AN INDIAN TRIBE, OR ANY INSTRUMENTALITY OF ANY ONE OR MORE OF THE FOREGOING WHICH IS WHOLLY OWNED BY ONE OR MORE STATES OR POLITICAL SUBDIVISIONS OR INDIAN TRIBES, PROVIDED THAT SUCH SERVICE IS EXCLUDED FROM EMPLOYMENT AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 53 STAT. 183, 26 U.S.C.A. 3301, 3306(C)(7)

---

2. non-profit entities as provided for in 40 O.S. Sec. 1-210(4)

40 O.S. Sec. 1-210 (4) Service performed by an individual in the employ of a community chest, fund, foundation or corporation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office; provided that such organization had four or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within either the calendar year or preceding calendar year, regardless of whether they were employed at the same moment of time.

HB 2652: (3) SERVICE PERFORMED IN THE EMPLOY OF A RELIGIOUS, CHARITABLE, EDUCATIONAL, OR OTHER ORGANIZATION THAT IS EXCLUDED FROM THE TERM "EMPLOYMENT" AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 84 STAT. 713, 26 U.S.C.A. 3301 TO 3311, SOLELY BY REASON OF SECTION 26 U.S.C.A. 3306(C)(8) OF THAT ACT.

Analysis: Oklahoma 40 O.S. Sec. 1-210 (4) codifies the definition of a 501(c)3 in 26 U.S. Code § 501 (c) 3<<https://www.law.cornell.edu/uscode/text/26/501>>. HB 2652 references the definition of nonprofit in U.S.C.A 3306 (C)(8): "service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3)"

---

3. Indian tribal entities as provided for in 40 O.S. Sec. 1-108

40 O.S. Sec. 1-108: The term "employment" shall include service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act (FUTA), 26 U.S.C., Section 3306(u), provided such service is excluded from "employment" as defined in FUTA solely by reason of 26 U.S.C., Section 3306(c)(7)

HB 2652: SERVICE PERFORMED IN THE EMPLOY OF A STATE, OR ANY POLITICAL SUBDIVISION THEREOF, OR IN THE EMPLOY OF AN INDIAN TRIBE, OR ANY INSTRUMENTALITY OF ANY ONE OR MORE OF THE FOREGOING WHICH IS WHOLLY OWNED BY ONE OR MORE STATES OR POLITICAL SUBDIVISIONS OR INDIAN TRIBES, PROVIDED THAT SUCH SERVICE IS EXCLUDED FROM

EMPLOYMENT AS DEFINED IN THE "FEDERAL UNEMPLOYMENT TAX ACT," 53 STAT. 183, 26 U.S.C.A. 3301, 3306(C)(7);

---

I ultimately defer to the Arizona Department of Economic Security but would appreciate any DOL determinations that could be provided to this agency.

Grant Hanna  
Legislative Research Analyst  
Senate Commerce & Workforce Development Committee  
1700 W. Washington  
Phoenix, AZ 85007  
O: 602.926.3171

From: Smith, Sherry L - ETA [mailto:Smith.Sherry.l@DOL.GOV]  
Sent: Friday, April 08, 2016 9:46 AM  
To: Grant Hanna  
Subject: FW: HB 2652 - USDOL conformity issue

Good Morning,

Please see the message below. If you have any additional questions or need further clarification, please let me know.

Regards,

Sherry L. Smith, MBA, MSM  
Unemployment Insurance Program Specialist  
U.S. Department of Labor  
Employment and Training Administration  
Region 6, San Francisco  
90 7th Street, Suite 17-100  
San Francisco, CA 94103  
Phone: (415) 625-7982  
Fax: (415) 625-7923  
Email: smith.sherry.l@dol.gov<mailto:smith.sherry.l@dol.gov>

From: McGucken, John - ETA  
Sent: Friday, April 08, 2016 4:59 AM  
To: Smith, Sherry L - ETA  
Cc: Johnston, Robert - ETA  
Subject: RE: HB 2652 - USDOL conformity issue

Sherry,

This is the language Oklahoma has offered to add to a similar bill and would take care of the issue raised in our letter. Note: It cites to the AZ law and they would need to be substituted. Hope this helps.

(E) This section shall not apply to the services provided by qualified market place contractors when the services are performed for governmental entities as provided for in 40 O.S. Sec. 1-210(3), non-profit entities as provided for in 40 O.S. Sec. 1-210(4), or Indian tribal entities as

provided for in 40 O.S. Sec. 1-108.

From: Smith, Sherry L - ETA  
Sent: Wednesday, April 06, 2016 12:42 PM  
To: McGucken, John - ETA  
Subject: FW: HB 2652 - USDOL conformity issue

From: Grant Hanna [mailto:GHanna@azleg.gov]  
Sent: Wednesday, April 06, 2016 9:22 AM  
To: Smith, Sherry L - ETA  
Subject: FW: HB 2652 - USDOL conformity issue

Good morning Ms. Smith,

Could you please give me a call at (602) 926-3216? This bill is going to the floor today and I am hoping to remedy this issue with an amendment. Thank you!

Grant Hanna  
Legislative Research Analyst  
Senate Commerce & Workforce Development Committee  
1700 W. Washington  
Phoenix, AZ 85007  
O: 602.926.3171

From: Ber, Kathy, A [mailto:Kber@azdes.gov]  
Sent: Wednesday, April 06, 2016 8:37 AM  
To: Melissa Taylor  
Cc: Grant Hanna  
Subject: Fwd: HB 2652 - USDOL conformity issue

FYI

Sent from my iPhone

Begin forwarded message:

From: "Ber, Kathy, A" <Kber@azdes.gov<mailto:Kber@azdes.gov>>  
Date: April 6, 2016 at 8:35:45 AM MST  
To: Representative Jill Norgaard <jnorgaard@azleg.gov<mailto:jnorgaard@azleg.gov>>  
Cc: Travis Swallow <tswallow@azleg.gov<mailto:tswallow@azleg.gov>>, Diana Clay  
<dclay@azleg.gov<mailto:dclay@azleg.gov>>  
Subject: HB 2652 - USDOL conformity issue  
Good morning Representative Norgaard,

DES received the attached letter from the US Department of Labor regarding HB 2652. They state that the bill is not in conformity with federal unemployment insurance laws and regulations. As you may be aware, if legislation that is not in conformity is enacted the state could lose its federal unemployment insurance funding and employers Federal Unemployment

Tax Act (FUTA) tax credits.

The Department is reviewing the letter at this time.

Please let me know if you have any questions.

Kathy Seeglitz Ber

Legislative Director

Arizona Department of Economic Security

Main: (602) 542-4669<tel:(602)%20542-4669> | Direct: (602) 542-2548<tel:(602)%20542-2548>

| Mobile: (602) 540-9018<tel:(602)%20540-9018>

[www.azdes.gov](http://www.azdes.gov)<<http://www.azdes.gov/>>

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[REDACTED]

**From:** Jerry Valdez [REDACTED]

**Sent:** Wednesday, June 6, 2018 1:13 PM

**To:** Simmons, Tommy <tommy.simmons@twc.state.tx.us>; Owens, Brian <brian.owens@twc.state.tx.us>

**Subject:** Illinois Regulatory Language

**CAUTION:** Email not from TWC System. Use care when clicking links and opening attachments.

**Jerry Valdez**  
[REDACTED]

512-477-1117 Office

512-694-7611 Mobile

**Mailing Address**

P.O. Box 12031

Austin, Texas 78711

**Physical Address**

816 Congress Avenue, Ste. 1125

Austin, Texas 78701

**Hughs,Ruth R**

---

**From:** Simmons,Tommy  
**Sent:** Thursday, June 7, 2018 9:39 AM  
**To:** Hughs,Ruth R  
**Subject:** FW: FW: FW: Handy: TX

FYI - Tommy

**From:** Jerry Valdez [REDACTED]  
**Sent:** Wednesday, June 6, 2018 6:01 PM  
**To:** Simmons,Tommy <tommy.simmons@twc.state.tx.us>  
**Cc:** Owens,Brian <brian.owens@twc.state.tx.us>; Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>; Hughs,Ruth R <ruth.hughs@twc.state.tx.us>; Mackenna Weymeyer [REDACTED]  
**Subject:** Re: FW: FW: Handy: TX

thanks for the call today. I am adding Mackenna Wehmeyer to the email chain. she is covering me during my upcoming trip.

she can arrange to get the handy.com folks lined up once you have briefed Comm. Hughs.

many thanks and take care.

**Jerry Valdez**  
[REDACTED]

512-477-1117 Office  
512-694-7611 Mobile

**Mailing Address**  
P.O. Box 12031  
Austin, Texas 78711

**Physical Address**  
816 Congress Avenue, Ste. 1125  
Austin, Texas 78701

On Tue, Jun 5, 2018 at 4:33 PM, Simmons,Tommy <tommy.simmons@twc.state.tx.us> wrote:

Jerry,

We're good to go for 1:00 Central time tomorrow and are looking forward to the call.

Sincerely,

Tommy Simmons

**From:** Owens,Brian  
**Sent:** Tuesday, June 5, 2018 4:21 PM  
**To:** Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

Good here

**From:** Simmons,Tommy  
**Sent:** Tuesday, June 05, 2018 3:57 PM  
**To:** Jerry Valdez [REDACTED]; Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

I can do that – if that works for you, Brian, we'll calendar it that way.

Tommy Simmons

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 3:55 PM  
**To:** Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Simmons,Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Subject:** Re: FW: Handy: TX

sorry. really sorry. lots of moving parts and lots of different people on this call. we need to do the call at 1 PM central.

again, my apologies. talk to you at 1pm.

can someone please confirm receipt of this change to the calendar ?

On Tue, Jun 5, 2018 at 4:09 PM Jerry Valdez [REDACTED] wrote:

good afternoon, all -

2pm Call tomorrow. see below.

Dial In Number 888-296-6500  
[REDACTED]

On Tue, Jun 5, 2018 at 11:00 AM Owens,Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)> wrote:

Good here.

Brian Owens

Chief of Staff

Commissioner Ruth Hughs

Texas Workforce Commission

512-936-2772

[Brian.owens@twc.state.tx.us](mailto:Brian.owens@twc.state.tx.us)

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**From:** Simmons, Tommy  
**Sent:** Tuesday, June 05, 2018 9:38 AM  
**To:** Bergmann, Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>; Jerry Valdez [REDACTED]  
**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

It's good for me.

Thanks,

Tommy

---

**From:** Bergmann, Kimberly  
**Sent:** Tuesday, June 5, 2018 9:30 AM  
**To:** Jerry Valdez [REDACTED]  
**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>; Simmons, Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>  
**Subject:** RE: FW: Handy: TX

How would 2 p.m. work?

Kim Bergmann

Executive Assistant

Texas Workforce Commission

Commissioner Ruth Hughs

101 E. 15<sup>th</sup> Street, Room 630

Austin, TX 78778

Phone: 512-463-9986

Fax: 512-463-1289

[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Bergmann, Kimberly

**Sent:** Tuesday, June 5, 2018 8:23 AM

**To:** 'Jerry Valdez' [REDACTED]

**Cc:** Owens, Brian <[brian.owens@twc.state.tx.us](mailto:brian.owens@twc.state.tx.us)>; Simmons, Tommy <[tommy.simmons@twc.state.tx.us](mailto:tommy.simmons@twc.state.tx.us)>

**Subject:** RE: FW: Handy: TX

Jerry:

Brian Owens and Tommy Simmons are available anytime between 1-4 p.m. tomorrow for a conference call.

Kim Bergmann

Executive Assistant

Texas Workforce Commission

Commissioner Ruth Hughs

101 E. 15<sup>th</sup> Street, Room 630

Austin, TX 78778

Phone: 512-463-9986

Fax: 512-463-1289

[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)

**From:** Jerry Valdez [REDACTED]  
**Sent:** Tuesday, June 5, 2018 6:58 AM  
**To:** Hughs,Ruth R <[ruth.hughs@twc.state.tx.us](mailto:ruth.hughs@twc.state.tx.us)>  
**Cc:** Bergmann,Kimberly <[kimberly.bergmann@twc.state.tx.us](mailto:kimberly.bergmann@twc.state.tx.us)>  
**Subject:** Re: FW: Handy: TX

hi Kim - Good Morning.

how about afternoon, sometime. maybe 1-4pm timeframe?

please advise. thank you. once confirmed, I will send out calendar item with call in info.

**Jerry Valdez**

**512-477-1117 Office**

**512-694-7611 Mobile**

**Mailing Address**

P.O. Box 12031

Austin, Texas 78711

**Physical Address**

816 Congress Avenue, Ste. 1125

Austin, Texas 78701

On Mon, Jun 4, 2018 at 5:52 PM, Jerry Valdez [REDACTED] wrote:

let's try for a pre call with Kim.

let me round my folks in and be in touch.

Kim

what is better ? morning or afternoon ?

On Mon, Jun 4, 2018 at 4:54 PM Hughs,Ruth R wrote:

Hi Jerry. I'm at the Army War College this week with limited reception. I can ask my staff to cover or we can set something up for the next week. let me know your preference. I am copying Kim to coordinate.

Any updates on the status of the legislation in other states? I did see some states have laws kicking in this summer.

---

**From:** Jerry Valdez [REDACTED]  
**Sent:** Monday, June 4, 2018 12:12:25 PM  
**To:** Hughs,Ruth R  
**Subject:** Re: FW: Handy: TX

any chance we could hop on a call on Wednesday?

On Wed, May 23, 2018 at 4:20

Thank you for this list of litigation involving handy. What I was hoping to see was what legislation Handy has pursued in other states and what the status of that legislation is at this point? Also, is the legislative effort to have workers classified as independent contractors only, or to include a benefits contribution as well as IC status (I think that is what they were seeking in NY, not sure if sought in other states or not)? Hope this makes sense. Look forward to hearing back soon. Thanks!

Ruth R. Hughs

Commissioner Representing Employers



Texas Workforce Commission

101 E. 15<sup>th</sup> Street

Austin, Texas 78778-0001

**Subject:** Fwd: FW: Handy: TX

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pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

**Jerry Valdez**

[REDACTED]

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

**Hughs, Ruth R**

---

**From:** Hughs, Ruth R  
**Sent:** Tuesday, June 5, 2018 10:42 AM  
**To:** Owens, Brian  
**Cc:** Bergmann, Kimberly  
**Subject:** Re: Handy: TX

Great. Thanks. We are at lunch now but I can check messages. Let me know if you need anything.

Sent from my iPhone

## Hughs,Ruth R

---

**From:** Hughs,Ruth R  
**Sent:** Tuesday, June 5, 2018 7:16 AM  
**To:** Jerry Valdez  
**Cc:** Bergmann,Kimberly; Owens,Brian  
**Subject:** Re: Handy: TX

Ok. Kim can help organize a time. I will ask Brian Owens to take the call. Thanks.

Sent from my iPhone

On Jun 4, 2018, at 6:53 PM, Jerry Valdez [REDACTED] wrote:

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Texas Workforce Commission

101 E. 15<sup>th</sup> Street

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thank you very much.

**Jerry Valdez**

[REDACTED]

--

Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117

## Hughs,Ruth R

---

**From:** Owens,Brian  
**Sent:** Tuesday, June 5, 2018 9:19 AM  
**To:** Hughs,Ruth R  
**Cc:** Bergmann,Kimberly  
**Subject:** RE: Handy: TX

...Tommy and I will be talking with him tomorrow sometime between 1p and 4p.

**From:** Hughs,Ruth R  
**Sent:** Tuesday, June 05, 2018 7:16 AM  
**To:** Jerry Valdez [REDACTED]  
**Cc:** Bergmann,Kimberly <kimberly.bergmann@twc.state.tx.us>; Owens,Brian <brian.owens@twc.state.tx.us>  
**Subject:** Re: Handy: TX

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Sent from my iPhone

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Ruth R. Hughs

Commissioner Representing Employers

Texas Workforce Commission

101 E. 15<sup>th</sup> Street

Austin, Texas 78778-0001

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pleased see attached, per our email exchange.

also, please let me know what day would work for us to visit by phone.

thank you very much.

**Jerry Valdez**

[REDACTED]

--  
Jerry Valdez

[REDACTED]

512-694-7611

512-477-1117